

**HERMAN GIBB, PhD, 4-9-09**

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IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his )  
capacity as ATTORNEY GENERAL )  
OF THE STATE OF OKLAHOMA and )  
OKLAHOMA SECRETARY OF THE )  
ENVIRONMENT C. MILES TOLBERT, )  
in his capacity as the )  
TRUSTEE FOR NATURAL RESOURCES )  
FOR THE STATE OF OKLAHOMA, )

Plaintiff, )

vs. )

TYSON FOODS, INC., et al, )

Defendants. )

4:05-CV-00329-TCK-SAJ

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THE VIDEOTAPED DEPOSITION OF  
HERMAN GIBB, PhD, produced as a witness on behalf  
of the Plaintiff in the above styled and numbered  
cause, taken on the 9th day of April, 2009, in the  
City of Tulsa, County of Tulsa, State of Oklahoma,  
before me, Lisa A. Steinmeyer, a Certified Shorthand  
Reporter, duly certified under and by virtue of the  
laws of the State of Oklahoma.

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**EXHIBIT**

tabbles

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1 what research -- the results of the research.

2 Q As of today, the method for determining  
3 whether there is a risk to human health, which is  
4 the accepted way to do it in this country, is to  
5 apply the standards that the EPA has promulgated, is  
6 that correct, when we deal with primary body  
7 contact?

10:45AM

8 A Well, that's what, you know, was advanced in  
9 1986. That's what we're using today. I think, you  
10 know, to pull it back would be to say, well, states  
11 say what do we do, we need to have something. So  
12 that's what's being used. That doesn't mean that  
13 it's the best we have or the best we can do. It's  
14 what we have right now, and there's a need by states  
15 to have some kind of a standard so it doesn't  
16 necessarily say the standard is good or that we are  
17 even -- and that the standard is even good at  
18 predicting what the health risk is, but it is a  
19 standard, and that's what states want to have. So  
20 that's what we use.

10:46AM

10:46AM

10:46AM

21 Q Then what standard do you recommend that this  
22 court apply in determining whether there is a risk  
23 to human health due to the conditions found in the  
24 Illinois River watershed?

25 A I'm not in a position to recommend a standard.

10:47AM

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**55**

1 I mean, I think that's, you know, the -- going to be  
2 the result of the research that the agency is doing.  
3 I mean, I wouldn't advance a particular standard  
4 but -- but that's my answer.

5 Q Okay. Let's go to the more specific issues. 10:47AM  
6 Earlier we talked about the fact that Salmonella  
7 and -- that poultry is a known reservoir for  
8 Salmonella and Campylobacter. What is meant by  
9 reservoir?

10 A It means that they -- they have the bacterium 10:48AM  
11 in them. They don't get sick from Salmonella but  
12 they are a reservoir.

13 Q Okay, and both of those are enteric, that is,  
14 they are in the feces of the birds; is that correct?

15 A They're in the gut. 10:48AM

16 Q Okay.

17 A I mean, they could be in the gut, you know,  
18 but --

19 Q And they come out in the feces, do they not?

20 A Yeah. I presume, yeah, they would -- they 10:48AM  
21 could come out of the feces, but, you know, I think  
22 the -- you know, what the implication of that is how  
23 long would they remain in the feces, how long would  
24 they be viable, you know, after the feces is dropped  
25 and so forth. So, yes, they would come out I 10:49AM

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1 anything, does it, or what does it -- what does this  
2 fact -- let me rephrase. What does this fact tell  
3 you concerning whether there are or are not risks to  
4 people swimming in the Illinois River?

5 **A** Well, what it tells you is that there's 11:21AM  
6 nothing unique about the Illinois River watershed in  
7 terms of bacterial impairments.

8 **Q** But it doesn't tell you -- it doesn't inform  
9 you concerning the risk in the Illinois any more  
10 than what other forms as to the risk in, for 11:21AM  
11 instance, the Verdigris or Washita or any other  
12 rivers across the state?

13 **A** Doesn't inform you as to the risks? I'm not  
14 sure what you mean by that question.

15 **MR. BULLOCK:** Okay. Well, let's take our 11:22AM  
16 break.

17 **VIDEOGRAPHER:** We are off the Record at  
18 11:22 a.m.

19 (Following a short recess at 11:22  
20 a.m., proceedings continued on the Record at 11:32  
21 a.m.)

22 **VIDEOGRAPHER:** We are back on the Record at  
23 11:32 a.m.

24 **Q** Get back to your Paragraph 12, different water  
25 bodies have different sources for the pathogenic 11:32AM

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1 pollution that might be found in them, don't they?

2 **A** That's I think probably true, yes.

3 **Q** Some might be heavily influenced by urban  
4 runoff?

5 **A** That's true. 11:33AM

6 **Q** Okay. Some it could be human waste either  
7 from point sources or from septic tanks; correct?

8 **A** Correct.

9 **Q** Some could be other animal operations other  
10 than poultry; correct? 11:33AM

11 **A** Correct.

12 **Q** And in each one of those instances, there are  
13 possibly different types of pathways and through  
14 which the bacteria travels before it gets to the  
15 water body? 11:33AM

16 **A** Yeah.

17 **Q** And the geology and rainfall in an area can  
18 have an influence upon the type and amount of  
19 bacterial pollution in a particular water body,  
20 can't it? 11:33AM

21 **A** Yes.

22 **Q** Okay, and when we talk about these 549  
23 reported impairments, each one of those needs to be  
24 looked at in terms of the issues that we've been  
25 through and very well others; is that correct? 11:34AM

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1     **A**     Yeah, I'd agree.

2     **Q**     Okay, and they also need to be -- in terms of  
3     if you were looking at the question of prioritizing  
4     the -- your attempts to address these problems, one,  
5     would you want to know the level of the bacterial  
6     pollution, that is, how high are the numbers; is  
7     that something that you'd want to look at?

11:34AM

8     **A**     The level of the bacteria pollution -- well,  
9     I'm sorry, with respect to what; with respect to  
10    identifying which sources?

11:35AM

11    **Q**     To identify which ones to start cleaning up.

12    **A**     Well, you'd have to know the -- I mean, if  
13    you -- you have to know what -- you talking about  
14    the level of bacteria pollution at the source or  
15    level of bacteria that you're measuring in the  
16    water?

11:35AM

17    **Q**     Well, measuring in the water, these 549  
18    impairments. When you start prioritizing them to  
19    address them, one of the things you look at is the  
20    severity of the problem, not merely the fact that  
21    it's been identified as impaired, wouldn't you or  
22    would you?

11:35AM

23    **A**     Well, I think, you know, you would look at  
24    that. You would also look at how many impairments  
25    there were. You know, if you are looking only at

11:35AM

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